

# EXHIBIT E

**AFFIDAVIT OF THOMAS R. KLINE, ESQUIRE IN SUPPORT OF  
APPROVAL OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

I, Thomas R. Kline, aver:

1. I am a founding partner, with Shanin Specter, of the law firm of Kline & Specter, P.C. ("Kline & Specter"). I am a member of the Pennsylvania Bar since 1978.
2. This Affidavit is based upon personal knowledge and information provided by others in our firm at my request.
3. Kline & Specter has been involved in the Vioxx litigation since 2003. We have helped to fund this litigation through federal MDL assessments, assessments in the NJ Consolidated Litigation ("NJCL"), and by other advancements of common benefit costs.
4. While acting through the NJCL, the MDL, and the Philadelphia Coordinated Litigation ("PCL"), our firm has provided extensive services for the common benefit of all Vioxx litigants as follows: participation on multiple committees, including the following MDL Committees: Plaintiffs' Steering Committee ("PSC"), the Science Committee, the Discovery Committee, the Trial Package Committee, and the Trial Committee; factual discovery including extensive review of documents and depositions; legal research, briefing, drafting and argument; deposition cuts; email, telephone and in person conferences with co-counsel regarding the discovery, legal, and trial strategy; expert preparation, reports and presentation for deposition; medical and scientific research; medical review of cases for bellwether trials; preparation of the trial package; and service as liaison counsel for the PCL. Either I or Mr. Balefsky attended nearly every Status Conference and pre-meeting along with MDL Plaintiffs Executive Committee ("PEC") members.
5. I personally served on the Plaintiff's Steering Committee in the MDL, and co-chaired the Trial Committee. Lee Balefsky, the head of our Pharmaceutical Litigation department, served on the Discovery Committee, and along with Michelle Tiger, served as Liaison Counsel in the Philadelphia Coordinated Vioxx Litigation. Two physician-attorneys in our office, Mark Hoffman, M.D., J.D. and Lisa Dagostino, M.D., J.D. served on the Science Committee. Dr. Dagostino also served on the Trial Package Committee and the Discovery Committee. Dr. Dagostino and Mr. Balefsky also served on the Stroke Sub-Committee, and Mr. Balefsky was the head of the Stroke Committee in the NJ Consolidated Litigation.
6. The most difficult and central issue in Vioxx litigation was causation. Because of our experience with discovery and trial of complex cases, including pharmaceutical cases, we were

assigned a substantial role in the development of the causation case. We deposed many of the key Merck officers and scientists, including trial witnesses, namely: Raymond Gilmartin (CEO), Edward Scolnick, M.D. (Former President, Merck Research Laboratories), Peter Kim, Ph.D. (President, Merck Research Laboratories), Alise Reicin, M.D. (Senior Director), Alan Nies, M.D., Ph.D. (Senior VP, Clinical Sciences), David Anstice (President of Human Health), Peter DiBattise, M.D. (Merck Research Labs cardiologist), Barry Gertz, M.D., Ph.D. (Executive Vice President), Joseph Lynch, Ph.D. (Senior Director, Pharmacology), Kathleen Metters, Ph.D. (Head of Basic Research, Merck Frosst), Thomas Simon, M.D. (Senior Director, Clinical Research), and Deborah Shapiro, Ph.D. (Director of Clinical Biostatistics). We also prepared to take the cancelled depositions of Gregory Geba, M.D. (Senior Director of Clinical Development) and Robert Silverman, M.D. (Senior Director, Regulatory Affairs). I was preparing to take the de bene esse deposition of Alise Reicin on behalf of the MDL when the litigation settled. Reicin was a key Merck witness at every Vioxx trial.

7. At the request of lead and liaison counsel, I took deposition testimony of three prominent third party figures in the Merck litigation -- Eric Topol, M.D. (Cleveland Clinic Chair of Cardiology); David Graham, M.D., M.P.H. (FDA pharmacoepidemiologist) and Gregory Curfman, M.D. (Editor of THE NEW ENGLAND JOURNAL OF MEDICINE).

8. Kline & Specter-led depositions were played during all Vioxx trials after the Texas Ernst trial. Accordingly, every juror who sat on any Vioxx trial during the pendency of the NJCL and MDL and every judge who presided heard testimony elicited by me and lawyers in our firm. The Topol deposition was one of the most challenging and important in the litigation.

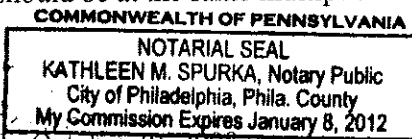
9. The testimony of Dr. Shapiro elicited by Mr. Specter on the fourth day of deposition testimony was held by New Jersey Superior Court Judge Carol Higbee to be the only evidence sufficient to support a punitive damages verdict against Merck. The underlying document upon which this testimony was based was discovered by Dr. Dagostino.

10. Utilizing their medical, scientific and bioethics training, our physician-attorneys committed extensive time to this litigation developing the causation theories of liability, as well as working with experts, performing extensive document review, and developing the liability portion of the case. Dr. Dagostino was relieved of her full-time medical malpractice work so that she could assist with these common benefit efforts full-time, to the near exclusion of all other work within our firm up until the time the settlement was announced in November 2007. Dr. Dagostino performed extensive research, document review, and preparation for all of the above named depositions, and

also assisted non-Kline & Specter counsel in their preparations for the depositions of Ned Braunstein, M.D. (Merck Senior Director - Regulatory), and Steven Nissen, M.D. (cardiologist at the Cleveland Clinic and noted Merck critic). She also provided assistance during the Irvin, Cona/McDarby, and Humeston trials. Dr. Dagostino prepared and developed reports and testimony with experts Cecil Pace-Asiak, Ph.D. (Pharmacology, University of Toronto), Jerry Avorn, M.D. (pharmacoepidemiology, Harvard), Wayne Ray, M.D. (pharmacoepidemiology, Vanderbilt), Suzanne Parisian, M.D. (former FDA Medical Officer), Stephen Schondelmeyer, Pharm.D., Ph.D. (University of Minnesota - Health Systems), Steven Levine, M.D. (Mt. Sinai - Stroke Neurology) and Edward Feldmann, M.D. (Brown - Stroke Neurology). In her role as a member of the Science Committee and the Trial Package Committee, Dr. Dagostino researched, digested, and indexed over 3,000 articles from the medical literature, produced the Vioxx Litigation "Cast of Characters" (a comprehensive guide to the over 700 Merck employees, third parties, and experts involved in the litigation) and a "Dictionary" (a comprehensive guide to over 500 scientific terms and the alphabet soup of the Merck corporate structure), and assisted with the development of the Vioxx Theme Grid. Dr. Dagostino also undertook a systematic review of the underlying medical records of all the cardiovascular adverse events in the Merck clinical trials; this extensive project was underway at the time the settlement was announced and was therefore halted. I also participated in the Nissen and Avorn preparation. I was also active in handling press and media at various times.

11. Our firm, at the direction of Lead and Liaison Counsel, also played a major role in the preparation of the MDL response to Merck's preemption brief. Partners Mr. Specter and David Caputo provided legal briefing, and Dr. Dagostino also prepared a detailed factual response and presented the factual background at oral argument.

12. Based upon our contribution to the success of this litigation, the compensation of our firm should be at the same multiplier as all others in top leadership in this litigation.



Dated: October 30, 2008

Thomas R. Kline

Sworn to and subscribed before me  
this 30<sup>th</sup> day of October, 2008.

Notary Public

# Presentation to the Vioxx Fee Committee

Thomas R. Kline, Esq.  
Kline & Specter, P.C.

We all wish to be judged by our peers, by the men  
“after our own heart.” Only they really know our mind  
and only they judge it by the standard we fully  
acknowledge. Theirs is the praise we really covet and  
the blame we really dread.

C.S. Lewis

-----Original message-----

From: Russ Herman <rherman@hhkc.com>

To: Kline, Thomas R.

Sent: Thu Nov 08 10:23:36 2007

Subject: Re: VERY IMPORTANT/VIOXX INVITATION

Great you know Llee and Lisa invited Please try to get them here Your firm's team is and has been integral to ALL efforts No discussion outside of you three please !!!!!!!

## OVERVIEW

- Involved since 2003
- Provided litigation funding
- Developed substantial portion of the liability case
- Developed substantial portion of the causation case
- Expert development
- Extensive document review
- Trial package development
- Preemption briefing
- Trial case selection and trial strategy





# LEADERSHIP POSITIONS AND COMMITTEE MEMBERSHIPS

## COMMITTEE MEMBERSHIPS AND LEADERSHIP POSITIONS



KS lawyer	Position	Litigation
Tom Kline	Member, PSC Co-chair, Trial Committee	MDL MDL
Lee Balefsky	Member, Discovery Committee Liaison Counsel Chair, Stroke Committee	MDL Philadelphia CL NJCL
Lisa Dagostino, MD, JD	Member, Science Committee Member, Discovery Committee Member, Trial Package Committee Member, Stroke Committee	MDL MDL MDL NJCL
Mark Hoffman, MD, JD	Member, Science Committee	MDL
Michelle Tiger	Liaison Counsel	Philadelphia CL

# DEPOSITIONS OF KEY MERCK SCIENTISTS AND EXECUTIVES



## DEPOSITIONS OF KEY MERCK SCIENTISTS AND EXECUTIVES—PART I

Merck Executive/Scientist	Dates	KS deposition taker	KS deposition prep
 Raymond Gilmartin (CEO)	4/11/05	Shanin Specter	Lisa Dagostino, Michelle Tiger
 Edward Scolnick, M.D. (Former President, Merck Research Laboratories)	5/17/05 6/01/05 8/16/05	Tom Kline	Lisa Dagostino



## DEPOSITIONS OF KEY MERCK SCIENTISTS AND EXECUTIVES—PART II

Merck Executive/Scientist	Dates	KS deposition taker	KS deposition prep
 Peter Kim, Ph.D. (President, Merck Research Laboratories)	3/15/05 3/16/05 4/08/05 6/08/05	Shanin Specter	Lisa Dagostino
 Alise Reicin, M.D. (Senior Director, Merck Research Laboratories)	3/02/05 3/23/05 8/19/05	Tom Kline	Lisa Dagostino



## DEPOSITIONS OF KEY MERCK SCIENTISTS AND EXECUTIVES—PART III

Merck Executive/Scientist	Dates	KS deposition taker	KS deposition prep
 <p>Deborah Shapiro, Ph.D. (Director of Clinical Biostatistics)</p>	<p>1/25/05 2/14/05 6/29/05 6/30/05</p>	<p>Shanin Specter</p>	<p>Lisa Dagostino</p>
 <p>Peter DiBattise, M.D. (Merck Research Labs cardiologist)</p>	<p>4/07/06 6/09/06</p>	<p>Shanin Specter</p>	<p>Lisa Dagostino, Michelle Tiger</p>

## DEPOSITIONS OF KEY MERCK SCIENTISTS AND EXECUTIVES—PART IV

Merck Executive/Scientist	Dates	KS deposition taker	KS deposition prep
 Alan Nies, M.D., Ph.D. (Senior VP, Clinical Sciences, Merck Research Laboratories)	4/01/05 8/23/05	Shanin Specter	Lisa Dagostino, Michelle Tiger
 David Anstice (President US Human Health)	3/18/05	Lee Balefsky	Michelle Tiger

## DEPOSITIONS OF KEY MERCK SCIENTISTS AND EXECUTIVES—PART V

Merck Executive/Scientist	Dates	KS deposition taker	KS deposition prep
 <p>Barry Gertz, M.D., Ph.D. (Executive Vice President)</p>	9/28/05	Mark Hoffman	Lisa Dagostino
 <p>Thomas Simon, M.D. (Senior Director, Clinical Research)</p>	1/05/05 1/19/05	Mark Hoffman	Mark Hoffman



## DEPOSITIONS OF KEY MERCK SCIENTISTS AND EXECUTIVES—PART VI

Merck Executive/Scientist	Dates	KS deposition taker	KS deposition prep
 <p>Kathleen Metters, Ph.D. (Head of Basic Research, Merck Frosst)</p>	7/28/05	Shanin Specter	Lisa Dagostino
Joseph Lynch, Ph.D. (Senior Director, Pharmacology)	3/21/06	Shanin Specter, Lisa Dagostino	Lisa Dagostino

## TRIALS WHERE WE PROVIDED DIRECT SUPPORT AND ASSISTANCE

Date	Event
Fall 2005	Humeston I
Fall 2005	Irvin I
Winter 2006	Irvin II
Spring 2006	Cona/McDarby trial
Spring 2006	Grossberg trial
Winter 2007	Humeston II trial

# THE ABRAMS CASE

RE: PATIENT: Abrams, Leonard

BELOW IS A BRIEF IMPRESSION AND RECOMENDATIONS FOR YOUR PATIENT

SERVICE PROVIDED: CONSULT FOLLOW UP PROCEDURE

IMPRESSION:

FLS → much improv.

Spinal stenosis

Vioxx → ↑ BP, edema

RECOMMENDATIONS:

① Cont Ketamine TX - 25 mg



② Trial of ULTRAM

③ Tapen NTN



④ D/C VIOXX

DEPOSITIONS OF  
KEY THIRD PARTIES  
IN THE VIOXX LITIGATION



## DEPOSITIONS OF KEY THIRD PARTIES IN THE VIOXX LITIGATION—PART I

Third Party	Dates	KS deposition taker	KS deposition prep
 Eric Topol, M.D. (Cleveland Clinic Chair of Cardiology)	11/22/05	Tom Kline	Lisa Dagostino
 David Graham, M.D., M.P.H. (FDA Medical Officer)	5/09/06	Tom Kline	Lisa Dagostino, Robert Englert

## DEPOSITIONS OF KEY THIRD PARTIES IN THE VIOXX LITIGATION—PART II

Third Party	Dates	KS deposition taker	KS deposition prep
 <p>Steve Nissen, M.D. (Chairman, Cleveland Clinic Department of CV Medicine)</p>	12/12/06	--	Tom Kline Lisa Dagostino
 <p>Gregory Curfman, M.D. (Editor of THE NEW ENGLAND JOURNAL OF MEDICINE)</p>	1/17/07	Tom Kline	Lisa Dagostino



## DEPOSITIONS OF KEY THIRD PARTIES IN THE VIOXX LITIGATION—PART III

Third Party	Dates	KS deposition taker	KS deposition prep
 Jerry Avorn, M.D. (Chief of the Division of Pharmacoepid. at Brigham and Women's Hospital)	6/29/06 6/30/06	--	Tom Kline Lisa Dagostino
 Mal Mixon (Chairman of Board of Trustees Cleveland Clinic)	1/25/06	Tom Kline	Lisa Dagostino



# EXPERT DEVELOPMENT

## EXPERT DEVELOPMENT—PART I

Expert	KS attorney
 <p data-bbox="275 675 1150 837">Jerry Avorn, M.D. (Chief of the Division of Pharmacoepi. at Brigham and Women's Hospital)</p>	<p data-bbox="1224 443 1772 492">Lisa Dagostino, M.D., J.D.</p>
 <p data-bbox="275 1151 1041 1313">Wayne Ray, M.D. (Director of Pharmacoepidemiology, Vanderbilt)</p>	<p data-bbox="1224 862 1772 911">Lisa Dagostino, M.D., J.D.</p>

## EXPERT DEVELOPMENT—PART II

Expert	KS attorney
Cecil Pace-Asciak, Ph.D. (Pharmacology, University of Toronto)	Mark Hoffman, M.D., J.D. Lisa Dagostino, M.D., J.D.
Suzanne Parisian , M.D. (Former FDA Medical Officer)	Lisa Dagostino, M.D., J.D.
Steve Levine, M.D. (Stroke Neurologist, Mt. Sinai)	Mark Hoffman, M.D., J.D. Lisa Dagostino, M.D., J.D. Lee Balefsky
Ed Feldman, M.D. (Stroke Neurologist, Brown)	Lisa Dagostino, M.D., J.D.

# TRIAL PACKAGE

## KLINE AND SPECTER CONTRIBUTIONS TO TRIAL PACKAGE

- Cast of Characters--a comprehensive guide to the over 700 Merck employees, third parties, and experts involved in the litigation
- Dictionary--a comprehensive guide to over 500 scientific terms and the alphabet soup of the Merck corporate structure
- 3200 articles from the database/medical literature
- Refinement of theme grid (with Pete Kaufman and Jeff Grand)
- Documents we discovered during extensive document review (Merck, FDA, third party)
- Depositions (see above)
- Deposition cuts
- Work on modules (groupthink with Chris Tisi and Leigh O'Dell)
- Expert reports, depositions, prep
- Development of stroke package

IN THE WORDS OF OUR PEERS...

-----Original Message-----

From: Mark Lanier <WML@lanierlawfirm.com>

To: Kline, Thomas R. <Tom.Kline@KlineSpecter.com>

Sent: Thu Nov 24 03:53:17 2005

Subject: Wow!

Put down your computer/blackberry... Go outside ... Listen ... Can you hear that??? Can you hear the applause? It is coming from England... The applause is so loud, it is traveling the Atlantic!

I just read the Topol depo. If that is not your best work, I would love to see what is! Fantastic!!! Absolutely fantastic!!!

My compliments and praise... Happy Thanksgiving...

Lanier

**From:** Mark Lanier [WML@lanierlawfirm.com]  
**Sent:** Wednesday, April 12, 2006 7:09 AM  
**To:** degilman@egilman.com; Amos Presler; Benedict Morelli; Christopher Placitella; Dagostino, Lisa S.; Dara Hegar; Eric H. Weinberg; Evan M. Janush; Grand, Jeff; Ken S. Soh; Marion@egilman.com; Maura Kolb; Sigelman, Daniel  
**Subject:** RE: Where's the warning?

David...

A quick "Thank you!." Like Ernst, this case could not have been won without you and your wonderful staff... Thank you for all you did, day and night. Your medical help, investigation help, and even lawyering help were huge.

Like so many others on this email chain (Ben's constant advice, Chris's incredible discovery finds, Lisa/Shanin/Tom's incredible depositions and Shapiro/Topol work, Dara's night and day Radar O'Reilly imitation, Eric's constant help, even with medical stuff going on with his family, Evan on Rarick, Jeff's insight into all matters Merck, Kenny boy's picking up every loose thread and putting together data for cross, Marion and Amos -- Egil's maniacs, Maura who can find anything needed, and Sigelamn who knows too much about this stuff!), I got to do courtroom fun because of y'all's hard work.

Thank you so very much... You are a true friend.

Lanier



-----Original Message-----

From: Specter, Shanin  
To: 'WML@lanierlawfirm.com'  
Sent: Fri Apr 14 10:15:02 2006  
Subject: Re: Today

Mark -- thanks for your email.

It has to be a group effort to beat these folks...

Happy Easter to you and your family.

-----Original Message-----

From: Mark Lanier  
To: Specter, Shanin  
Sent: Fri Apr 14 09:34:45 2006  
Subject: RE: Today

Shanin...

Thanks again for the great job you did on Shapiro... Made all the difference in the world...

**From:** Mark Lanier [WML@lanierlawfirm.com]  
**Sent:** Wednesday, April 12, 2006 7:44 AM  
**To:** Specter, Shanin; Richard D. Meadow  
**Cc:** Vioxx Small Group; cseeger@seegerweiss.com; dbuchanan@seegerweiss.com  
**Subject:** RE: Punies

You were played in closing puni argument... Great find and delivery form you and Lisa both!!!!

-----Original Message-----

**From:** Specter, Shanin [mailto:Shanin.Specter@KlineSpecter.com]  
**Sent:** Friday, April 07, 2006 12:42 PM  
**To:** Richard D. Meadow  
**Cc:** Vioxx Small Group; Mark Lanier; cseeger@seegerweiss.com; dbuchanan@seegerweiss.com  
**Subject:** Re: Punies

Lisa Dagostino deserves the credit. She found the document, recognized and gave it to me.

I "had the luck to give the roar" -- WSC

-----Original Message-----

From: Richard D. Meadow  
To: Specter, Shanin  
Sent: Fri Apr 07 12:12:11 2006  
Subject: Punies

We got to punies because of you. Judge denied motion to dismiss!!!!

**From:** Steve Knowlton [SKnowlton@LocksLawny.com]  
**Sent:** Tuesday, June 27, 2006 7:36 PM  
**To:** Dagostino, Lisa S.  
**Subject:** RE: An Open Letter From Peter Kim

My colleagues tell me I destroyed Tyberg. I have no feeling about it at all.

didn't use Merck letter--got antsy at the last minute. Introduced Correction form NEJM. but Tyberg said he'd never seen it, so I let it pass after the jury heard it was published in the NEJM yesterday about APPROVe.

Arrack tomorrow. WE move to strike her. They've threatened to bring in Morrison for an hour. I'm going to ask for a proffer, and then move to strike as cumulative.

**LISA: THANK YOU. PLEASE TELL TOM THANKS FOR ME. YOUR WORK, AS A FIRM, HAS BEEN AN ESSENTIAL PART OF OUR CASE. WIN OR LOSE, IF THERE IS ANYTHING I CAN DO FOR YOU GUYS, ALL YOU HAVE TO DO IS ASK.**

Please pass on my thanks to Tom and Shanin.

Steve

**From:** Pete Kaufman [PKaufman@levinlaw.com]  
**Sent:** Wednesday, August 15, 2007 12:26 PM  
**To:** Dagostino, Lisa S.; ssanford@ssrlawyers.com; leigh.odell@beasleyallen.com; gmeunier@gainsben.com; JGrand@seegerweiss.com; MWeinkowitz@lfsblaw.com; dbuchanan@seegerweiss.com; cvtisi@aol.com; LDAVIS@hhkc.com; TShrack@lfsblaw.com  
**Cc:** Kline, Thomas R.; Spurka, Kathleen; Balefsky, Lee; Tiger, Michelle  
**Subject:** RE: Final Vioxx Database - List of Articles

Lisa,

What an incredible resource.

Your contributions to the trial package have been astonishing. If I knew a word better than "astonishing," I would use it.

And Kathy, thank you very much. It's almost painful to think of how much work went into this.

From: Cvtisi@aol.com <Cvtisi@aol.com>  
To: PKaufman@levinlaw.com <PKaufman@levinlaw.com>; Dagostino, Lisa S.;  
ssanford@ssrlawyers.com <ssanford@ssrlawyers.com>; leigh.odell@beasleyallen.com  
<leigh.odell@beasleyallen.com>; gmeunier@gainsben.com <gmeunier@gainsben.com>;  
JGrand@seegerweiss.com <JGrand@seegerweiss.com>; MWeinkowitz@lfsblaw.com  
<MWeinkowitz@lfsblaw.com>; dbuchanan@seegerweiss.com <dbuchanan@seegerweiss.com>;  
LDAVIS@hhkc.com <LDAVIS@hhkc.com>; TShrack@lfsblaw.com <TShrack@lfsblaw.com>  
CC: Kline, Thomas R.; Spurka, Kathleen; Balefsky, Lee; Tiger, Michelle  
Sent: Wed Aug 15 13:47:27 2007  
Subject: Re: Final Vioxx Database - List of Articles

Wow! Lisa and Kathy..this is great to have. You are fantastic. For a change, Pete's observations are dead on. You guys are the best. I particularly want to thank Kathy who has done a lot of work for this case.

**From:** Russ Herman [RHERMAN@hhkc.com]  
**Sent:** Thursday, August 02, 2007 1:37 PM  
**To:** Dagostino, Lisa S.  
**Cc:** Russ Herman  
**Subject:** RE: Barbour and Daniels

Lisa: Thanks for the memo - excellent work as usual. Russ

-----Original Message-----

From: Russ Herman [mailto:rrherman@hhkc.com]

Sent: Saturday, July 28, 2007 5:19 PM

To: Dagostino, Lisa S.

Subject: RE: Barbour and Daniels

Please send me press and all info on this issue we also need Foia request I am going to prepare talkin points and dep ouyline fot review bychris andy tom arnold Iwill be in trial e mths begin aug 15th But I want to keep heat on Wil personally monitor and have this group actively involved in fighting for and taking these deps Ipersonaly appreciate your continuous work at alevel of excellence Trial package and everything you have touched has been top notch Take care and thanks Russ

I can live on a good compliment for two months

--Mark Twain



CONCLUDING THOUGHTS....